

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
May 4, 2009

**D054114      People v. Ward**

The judgment is affirmed. Nares, J.; We Concur: McConnell, P.J., Haller, J.

**D054935      Construction Testing & Engineering v. Superior Court of San Diego  
County/Mission Road Self Storage, LLC et al.**

The petition is denied.

**D054231      In re Reyes on Habeas Corpus**

The petition is denied.

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FOURTH APPELLATE DISTRICT  
DIVISION ONE  
May 5, 2009

**D055045      State of California ex rel. Dept of Transportation v. Superior Court of San Diego County/San Bernardino County Flood Control District et al.**  
The petition is denied.

**D052963      People v. Gilbert**  
The judgment is affirmed. McDonald, J.; We Concur: McConnell, P.J., Nares, J.

**D054310      Abrams v. Superior Court of San Diego County/Abrams**  
The petition is denied.

**D052887      People v. Torres**  
The judgment is reversed. CERTIFIED FOR PUBLICATION    McConnell, P.J.;  
We Concur: McIntyre, J., Aaron, J.

**D054013      In re Torres on Habeas Corpus**  
The petition for writ of habeas corpus has been read and considered by Presiding Justice McConnell and Associate Justice McIntyre and Aaron. The petition is denied as moot in light of the decision in People v. Torres (May 6, 2009, D052887).

**D053290      People v. Mendoza**  
The order is affirmed. O'Rourke, J.; We Concur: McConnell, P.J., McIntyre, J.

**D054008      In re Pace on Habeas Corpus**  
The petition is denied.

**D054504      In re Edlin on Habeas Corpus**  
The "petition for rehearing" filed April 29, 2009, has been read by Justices Benke, Huffman and McDonald. The denial of a petition for a writ within the appellate court's original jurisdiction without issuance of an alternative writ or order to show cause is final immediately. (Cal. Rules of Court, rule 8.264 (b)(2)(A).) The petition for writ of habeas corpus was summarily denied on March 27, 2009. This court is without jurisdiction to rehear the matter.  
The clerk is directed to retain one copy of the request for reconsideration for our records and return the original and all other copies to petitioner.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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May 6, 2009

**D053569      People v. Ortega**

The judgment is affirmed. Haller, J.; We Concur: Huffman, Acting P.J., McDonald, J.

**D053916      In re Alexandra H. et al., Juveniles**

The judgment is affirmed. O'Rourke, J.; We Concur: McConnell, P.J., Huffman, J.

**D055059      Gutierrez-Carreno v. Ramirez**

The petition is denied.

**D053335      In re Jose T. et al., Juveniles**

The judgments are affirmed. McDonald, J.; We Concur: McConnell, P.J., Benke, J.

**D054189      Ghezeli et al. v. Ponder et al.**

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

**D054618      Unite-Here Local 30 v. San Diego Unified Port District/Lane Field San Diego Developers, LLC**

Upon filing a written abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

**D054720      J.D. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner J. D. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D054816      Alma M. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Alma M. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D054771      E. W. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner E. W. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
May 6, 2009 (Continued)

**D054921      Andrea P. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Andrea P. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D054858      V. S. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner V. S. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D054762      In re Estate of Tramposh**

The appeal filed March 9, 2009, is dismissed because appellant did not timely deposit costs for preparing the record on appeal.

**D054805      Trahan v. Hiel**

Pursuant to California Rules of Court, rule 8.140, the appeal filed March 17, 2009, is dismissed for appellant's failure to timely designate the record (Cal. Rules of Court, rule 8.121(a)).

**D054678      In re Woods on Habeas Corpus**

Woods petitioned in superior court for habeas corpus relief contending: 1. his due process rights were violated when he was not brought before a magistrate within 48 hours of his arrest; 2. his due process rights were violated at a line-up; 3. insufficient evidence supports one robbery conviction and the finding he was mentally competent; 4. the court committed sentencing errors; and 5. trial counsel was ineffective with regard to the pleas, sentencing and discovery. The superior court denied his petition by a five-page order on December 30, 2008 (HC19306 second petition.) Woods raises the same claims in this petition. We adopt the superior court's reasoning to deny the petition. We also deny Woods's inoperative request for constructive notice of appeal from the underlying judgment of conviction. The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE  
May 7, 2009

**D053176      G.G. Doe et al. v. State of California Department of Justice**

The judgment is affirmed. The Department is entitled to costs on appeal. McConnell, P.J.;  
We Concur: Nares, J., McIntyre, J.

**D052336      Fisher v. San Diego Gas & Electric Company et al.**

The judgment is affirmed. Defendants are entitled to costs on appeal. McConnell, P.J.;  
We Concur: Huffman, J., O'Rourke, J.

**D052364      In re Langnese on Habeas Corpus**

Justices Nares, Haller and Aaron have read and considered respondent's letter brief filed on May 4, 2009. Respondent informs the court that the Board of Parole Hearings's (Board) decision on December 18, 2008, finding petitioner suitable for parole, is now final as to the Board. Because the court cannot grant petitioner any further relief as to the Board's July 24, 2006, decision, the petition is moot. (See *Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541.) The petition is dismissed.

**D054230      Golden v. Lasher et al.**

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.

**D050631      Whispering Ridge Homeowners Association v. Chaudry**

**D052506      Whispering Ridge Homeowners Association v. Chaudry**

The petition for rehearing is denied.

**D054708      Coverstone v. Superior Court of San Diego County/Thurman et al.**

The petition is denied.

**D054832      Pogue v. People**

The petition is denied.

**D054453      In re Daniella F. et al., Juveniles**

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.412(d)(1)(A) and 8.416(g). The appeal is dismissed.

**D054872      Anna C. et al. v. Superior Court of San Diego County/San Diego County  
Health and Human Services Agency**

The attorney for petitioner Anna C. has notified the court that a petition for writ of mandate under California Rules of Court, Rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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May 7, 2009 (Continued)

**D054799        Monica F. v. Superior Court of San Diego County/San Diego County Health  
and Human Services Agency**

The attorney for petitioner Monica F. has notified the court that a petition for writ of mandate under California Rules of Court, Rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D053252        Bruno v. Matrixx Initiatives, Inc., et al.**

The petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE  
May 8, 2009

**D052214        People v. Shephard**

We modify the judgment by striking appellant's conviction for count 5, sexual penetration by an unknown object and, as corrected, the judgment is affirmed. As corrected, the judgment is ordered forwarded to the Department of Corrections and Rehabilitation. Benke, Acting P.J.; We Concur: Huffman, J., Irion, J.

**D052256        People v. Graham**

The petition for rehearing is denied.

**D052349        People v. Hill**

The judgment is affirmed. Nares, J.; We Concur: McConnell, P.J., McIntyre, J.

**D052384        Martinez v. P.W. Stevens, Inc.**

The judgment is affirmed. Respondent shall recover its costs on appeal. Nares, J.; We Concur: Huffman, Acting P.J., Aaron, J.

**D054165        In re Bryan H., a Minor**

The judgment is affirmed. Nares, Acting P.J.; We Concur: McIntyre, J., Irion, J.

**D052842        Mataele v. Mataele**

The petition for writ of supersedeas has been read and considered by Justices Haller, O'Rourke and Irion. The stay issued on April 20, 2009, is vacated. The petition is denied.

**D052842        Mataele v. Mataele**

Order affirmed. Appellant to bear respondent's costs on appeal. Haller, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

**D054602        People v. Eppard, Jr.**

The trial court is directed to amend the abstract of judgment to reflect defendant's true name, Richard Allen Eppard, Jr., and to forward a copy of the amended abstract to the Department of Corrections and Rehabilitation. The judgment is otherwise affirmed. Nares, J.; We Concur: McConnell, P.J., Benke, J.

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May 8, 2009 (continued)

**D052768        In re E.S, a Minor**

The order is affirmed. Father to pay his costs on appeal.<sup>15</sup>    CERTIFIED FOR PARTIAL PUBLICATION

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<sup>15</sup> Uncle and Aunt did not file briefs or appeal.  
Haller, J.; We Concur: Benke, Acting P.J., Irion, J.

**D054884        G. F. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Robert R. has notified the court that a petition for writ of mandate under California Rules of Court, Rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D053432        Hazewinkel v. Macgurn**

Judgment affirmed. Appellant to bear respondent's costs on appeal. Haller, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

**D052792        In re Martinez on Habeas Corpus**

The "motion advising the court of petitioner's intent to withdraw previous writ of habeas corpus and submit the instant amended petition for writ of habeas corpus" has been read and considered by Justices Benke, Huffman and McDonald. The denial of a habeas petition without issuance of an order to show cause is final in that court upon filing. (Cal. Rules of Court, rule 8.387(b)(1).) This court denied the previous habeas petition (D052792) without issuing an order to show cause on November 20, 2008. The court no longer has authority to modify the order. (Cal. Rules of Court, rule 8.264(c)(1).) The motion is denied. The clerk is directed to send a copy of the order denying the petition in D052792 to petitioner.



COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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May 8, 2009 (Continued)

**D055063            In re Foster on Habeas Corpus**

The petition for writ of habeas corpus has been read and considered by Justices Benke, Huffman and McDonald. We take judicial notice of the record in D049857.

A jury convicted Derryl Foster of robbery and false imprisonment by violence or menace and found that he was a principal armed with a firearm during commission of the offenses. The court sentenced him to 25 years to life to be served consecutively to a determinate term of 11 years.

We affirmed the judgment on appeal (D049857).

In this postappeal petition for writ of habeas corpus, Foster asserts, among other things, that his trial attorney did not provide effective assistance of counsel and the trial court violated his due process right to a fair trial. Foster indicates in the petition that he has not filed a petition with respect to these issues in any other court.

"[B]oth trial and appellate courts have jurisdiction over habeas corpus petitions, but a reviewing court has discretion to deny without prejudice a habeas corpus petition that was not filed first in a proper lower court." (*In re Steele* (2004) 32 Cal.4th 682, 692.) Application for writ relief should be made in the lower court in the first instance. The petition is denied without prejudice to refile in San Diego Superior Court, 220 West Broadway, San Diego, California 92101.

The clerk is directed to retain one copy of the petition for our records and to return the original petition and any other copies to Foster so he may file them in the appropriate court.

**D054368            Conservatorship of M. R.**

Respondent's motion to dismiss the appeal filed on 4/24/09, and appellant's opposition filed on 5/7/09, have been read and considered by the court. The appeal is dismissed.